

Draft Notice Describing Procedures for Verifying Unit Allocations,  
Use, Restoration and Recapture of Program Reserves and Transfers  
of Baseline Unit Allocations in the Tenant-Based Section 8 Program

**I. INTRODUCTION**

This Notice describes procedures for verifying unit allocations, the use, restoration and recapture of program reserves and transfers of baseline unit allocations in the tenant-based Section 8 program. This Notice supercedes Notices \_\_\_\_\_.

**II. DETERMINATION OF DECEMBER 31, 1999 BASELINE**

In order to calculate the allocation of renewal funding in the tenant based Section 8 program, the Department uses a Renewal Units number as a factor in its calculation. The Department will establish a baseline number of units reserved for each HA as of December 31, 1999, to be used in calculating the Renewal Units number for calendar year 2000 and subsequent years. The following process will be used to establish the December 31, 1999 baseline:

A. *STEP 1* The Department will determine the number of families assisted as of October 1, 1997, by obtaining the number of units under lease as of that date from supporting documentation submitted by public housing agencies with the Voucher for Payment of Annual Contributions and Operating Statement, Form HUD-52681. Based on this information, the Department will compare the number of units leased on October 1, 1997 to the number of units awarded to housing agencies over the history of the program (reserved units) as of October 1, 1997. (Prior to performing the comparison, the Department will add to the number of reserved units as of October 1, 1997 the additional authorized units reserved as a result of the Department's review of leasing in excess of

1 contract levels conducted in Federal Fiscal Year 1998 in accordance with PIH Notice 98-  
2 22 and letters sent to each affected Public Housing Agency in order to generate an  
3 adjusted reserved number of units.)<sup>1</sup> In establishing the Initial Baseline number of units,  
4 the Department will use the higher of the adjusted reserved number of units or the number  
5 of leased units as of October 1, 1997.

6 For example, on October 1, 1997, the “Main Street” Housing Authority was listed as  
7 having 100 reserved units in the Department’s records and subsequently reported that it  
8 was leasing 110 units at that time. The Department determined in 1998 that 5 units should  
9 be added to the Main Street Housing Authority as additional authorized units. In  
10 determining the Initial Baseline number of units, the Department would add the 5  
11 additional authorized units to the 100 reserved units to calculate a total of 105 adjusted  
12 reserved units. The Department would then compare the 105 adjusted reserved units to  
13 the 110 units reported as actually leased. Because the 110 units reported as leased  
14 exceeds the 105 adjusted reserved units, the Department would use 110 units as the Initial  
15 Baseline number. Or alternatively, the housing authority might have reported that it was  
16 leasing 100 units on October 1, 1997 in which case the Department would have compared  
17 the 100 units with the 105 adjusted reserved units and would have used 105 units as the  
18 Initial Baseline number.

19 B. *Step 2* The Department will make adjustments to add to the Initial Baseline any  
20 additional units reserved for the HA by the Department from additional funding reserved  
21 since October 1, 1997. Adjustments to the baseline number of units will include

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<sup>1</sup> This adjustment is necessary to avoid double counting units in the course of performing the comparison since a portion of the additional authorized units would also be included in the number of units leased on

1 incremental funding as well as conversion funding awarded to provide continued  
2 assistance to assisted families pursuant to the conversion of project based assistance to  
3 tenant based assistance. The Department will also include adjustments for assistance  
4 transferred from one housing agency to another.<sup>2</sup> The Department will include all of the  
5 adjustments that apply to the HA from October 1, 1997 until December 31, 1999 to  
6 establish the December 31, 1999 Baseline.

7 For example, in Fiscal Year 1998 the Department reserved funding for 10 units for the  
8 Main Street Housing Authority under the Family Unification Program whose initial  
9 funding increment expired in 1999. In Fiscal Year 1998 the authority also had 10 units  
10 added to its inventory as a result of the conversion of a property from project based to  
11 tenant based assistance whose funding increments expired in 1999. All 20 of these  
12 additional units whose funding first expired in 1999 would be added to the initial baseline  
13 to calculate the adjusted baseline number of units, 130.

### 14 **III. VERIFICATION OF UNIT ALLOCATION**

15 | A. [Separate out certificates/vouchers] In order to calculate the allocation of renewal  
16 funding in the tenant based Section 8 program, the Department uses a Renewal Units  
17 number as a factor in its calculation. The Department has determined the December 31,  
18 1999 baseline number of units to be used for each HA's (HA) renewal calculation for  
19 calendar year 2000. In January of 2000 the Department will mail to each public HA a  
20 letter with an exhibit that will list the number of units determined by HUD to be part of the  
21 HA's Renewal Units. The exhibit will separately list:

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October 1, 1997.

<sup>2</sup> In this case the gaining housing agency's adjusted baseline would increase and the transferring housing agency's adjusted baseline would

- 1 1. all of the unit counts associated with each active increment that applies to the HA
- 2 as of December 31, 1999;
- 3 2. the number of reserved units as of 10/1/97;
- 4 3. the number of leased units as of 10/1/97;
- 5 4. any additional authorized units reserved as a result of the Department's review of
- 6 leasing in excess of contract levels conducted in Federal Fiscal Year 1998 in
- 7 accordance with letters sent to each affected HA;
- 8 5. any units awarded to the HA between 10/1/97 and December 31, 1999.
- 9 6. The total number of units scheduled to expire after December 31, 2000
- 10 7. The total number of units determined to make up the Renewal Units for the
- 11 purposes of calculating the allocation of renewal funding for calendar year 2000.

12 **[We intend to provide an example of this exhibit prior to the next meeting]**

13 B. Housing Agencies will have 90 days from the date of the letter to review the  
14 Department's listing of the numbers of units and to notify the Department of any errors:

- 15 1. the HA's notification must at a minimum specify the increment(s) in error, state
- 16 that it believes that the Department has made an error in determining the number of
- 17 units, indicate the correct number of units, include documentary evidence
- 18 demonstrating that the unit count is in error and provide a narrative explanation of how
- 19 the documentation shows that the Department's baseline unit exhibit is in error.
- 20 2. the notification must be received by the FMC (FMC) [We need to list address] no
- 21 later than 90 days from date of the letter.

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decrease in an amount equal to the number of units transferred.

1        3.    if the FMC does not receive a notification of errors within the prescribed time  
2        frame, the Department will consider the ~~Renewal Allocation Unit~~ Renewal Units  
3        number and the other listed unit numbers established and will not consider later  
4        requests for adjustments to the unit count based on error except in extraordinary  
5        circumstances.

6        C.        the FMC will review any error notifications submitted by housing agencies within  
7        a reasonable time period in light of the number of error notifications received<sup>3</sup> (while the  
8        error notification is under review, the Department will not change the allocation of  
9        renewal funding to compensate for the asserted error):

10       1.    if the FMC determines that an error has occurred, it will make an adjustment to  
11       the HA's ~~Renewal Allocation Unit~~ Renewal Unit count; however, in making its  
12       determination, the FMC will not be limited to agreeing with the HA's noted error but  
13       will have the ability to review the accuracy of the entire documentary history that  
14       resulted in the unit count for the HA.

15       a.    If there is sufficient funding available, the Department will make  
16       appropriate ~~upward~~ adjustments to the applicable HA's unit count during the  
17       calendar year in which it makes the determination, otherwise the adjustment  
18       will be applied to the following calendar year;

19       b.    the FMC will send the HA a revised unit exhibit with a description of  
20       when and how the adjustment to compensate for the error will be made;

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<sup>3</sup> The FMC will attempt to complete its reviews within 60 days.

2. if the FMC determines that there is no error, it will send a letter to the notifying HA indicating that it does not believe that there is an error with an explanation of its reasoning.

3. If a HA disagrees with the FMC's determination (either concluding that there is no error or disagreeing with the number of units in error), it can ask for the Assistant Secretary of Public and Indian Housing to reconsider the determination of the FMC:

a. its request for reconsideration must be received no later than 30 days after the date of the FMC's reply to the HA's notification;

b. the request for consideration must clearly state the nature of the disagreement and the reason that the determination of the FMC is incorrect;

c. the Assistant Secretary shall have the same ability to respond to the HA's error notification that the FMC has in III C 1 and III C 2 above.

d. the Assistant Secretary for Public and Indian Housing will reply to the request for reconsideration within 30 days;

i. if the Assistant Secretary agrees with all or part of the HA's request for reconsideration ~~he~~ the Assistant Secretary will issue an appropriate directive to the FMC and will also provide a written response to the applicable HA;

ii. if the Assistant Secretary disagrees with the HA's request for reconsideration ~~he~~ the Assistant Secretary will provide the HA with a written response explaining why the HA's request will not be further considered;

iii. ~~the Department is not authorizing any further reconsideration process or arbitration process;~~ the decision of the Assistant Secretary shall be final;

#### IV. ANNUAL CONTRIBUTIONS CONTRACT RESERVES

##### A. General

Housing agencies continue to be authorized to maintain local program reserves (Annual Contributions Contract reserves) in accordance with the Consolidated Annual Contributions Contract. Because of the passage of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act), the Department revised its methodology for allocating funding for the renewal of expiring contracts in the tenant-based Section 8 program. The Department anticipates that some housing agencies will not receive adequate budget authority under the revised allocation system because of the possibility that localities will experience ~~unpredicted~~ increases in the cost per unit of tenant-based assistance that exceed their renewal allocation. In order to provide reasonable ~~insurance~~ assurance that there will be adequate funding to support families assisted in the tenant-based Section 8 program, the Department believes that housing agencies should have access to a ~~prudent~~ Annual Contributions Contract reserve. The normal reserve level is 1/6<sup>th</sup> of the ~~allocated budget authority~~ current year projected expenditures for a given year. The ACC reserve for the program will include reserve amounts for both the certificate and voucher programs. The amounts in each program reserve (certificate or voucher) can be freely transferred from one program account to the other based on need. Amounts accumulated by housing agencies above the 1/6<sup>th</sup> level are considered excess reserves.

B. Accessing ACC Reserves

Housing agencies will be permitted to access up to 50% of their program reserves under the circumstances noted below provided that they are ~~designated standard or high performers~~not designated as troubled under the Section 8 Management Assessment Program (SEMAP) and are not in breach of their ACC. To access reserves up to 50% of their reserves HAs will submit a ~~revised~~ budget or budget revision to the FMC. In order for ~~standard and high performing~~non-troubled housing agencies that have not breached their ACC to access more than 50% of their program reserves, they must submit ~~to the~~ following to the FMC: 1) an amended budget or budget revision, 2) a narrative justification that clearly outlines the circumstances that cause the HA to need to access its reserves, 3) a plan that describes~~description of~~ the appropriate steps that it is taking to ensure that it will not exceed its budget authority and reserves in the current ~~and subsequent~~ fiscal years as well as how it will reduce (and ultimately eliminate) its reliance on reserve funding over the subsequent 2 years and 4) in instances in which the HA is obligated to restore reserves, its plan for restoring reserves. HAs designated as troubled under SEMAP will be permitted to access reserves only after the FMC and the applicable Troubled Agency Recovery Center (TARC) havehas approved the request. The FMC shall inform the applicable Troubled Agency Recovery Center (TARC) in the event a troubled HA requests access to its reserves and shall also inform the TARC of the proposed decision on the request. -A troubled HA may be required by the FMC and/or the TARC to provide documentation and/or justification to substantiate its request to access reserve funds.



1 C. Permissible Uses of ACC Reserves

2 1. Supporting the ~~Allocated~~ Reserved Number of Units

3 a. Housing agencies are to compare the budget authority assigned to them  
4 pursuant to the allocation of renewal funding with the actual per unit costs that  
5 they are incurring. If at any point in time the HA determines that the overall  
6 cost of maintaining assistance for the number of units ~~allocated~~ reserved to the  
7 HA has increased to a level that will not be supported within the budget  
8 authority that the Department has assigned to the agency, the agency can  
9 request authorization to use a portion of its ~~program~~ ACC reserves. In this  
10 instance the Department will restore depleted reserves in accordance with  
11 Section IV D below subject to the availability of funds.

12 b. ~~Housing agencies are permitted to modify the payments standards that~~  
13 ~~apply to assisted families in the Section 8 program pursuant to \_\_\_\_\_.~~  
14 ~~Housing agencies that are attempting to facilitate deconcentration of baseline~~  
15 ~~units through the use of increased payment standards are permitted to access~~  
16 ~~program reserves to support such efforts~~

17 2. Supporting Units Above the Allocation Baseline

18 a. A housing agency that has had to access reserves to support units beyond  
19 those supported by allocated budget authority must not issue any further  
20 tenant-based assistance to families on their waiting list until the number of  
21 families in its program is reduced below the baseline level through attrition<sup>4</sup>.

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<sup>4</sup> In this instance, the housing agency cannot simply return to 100% leasing of its reserved number of units before it can start issuing new vouchers because if it does it will

1           b.   Housing agencies are permitted to issue as many units as can be prudently  
2           supported within the HA's allocated budget authority for a given year even if  
3           the number of units exceeds the number of units reserved for the HA. HAs  
4           that exercise this flexibility are engaging in "~~statutory~~ maximized leasing." It is  
5           important for HAs that take advantage of ~~statutory~~ maximized leasing to  
6           examine the long term impact of ~~statutory~~ maximized leasing to ensure **that it**  
7           **does not jeopardize adequate support for the reserved number of units in**  
8           **subsequent years.** The units supported above the HA's reserved number of  
9           units (~~statutorily~~ maximized leased units) will not be supported by the  
10          Departments calculation of the allocation of renewal funding ~~on a long term~~  
11          ~~basis~~. Housing agencies will in all likelihood not receive sufficient budget  
12          authority in subsequent years to be able to maintain ~~statutorily~~ maximized  
13          leased units. Housing agencies are permitted to use program reserves to  
14          maintain assistance for ~~statutorily~~ maximized leased units on a temporary basis  
15          while the HA takes steps to reduce the size of its program through attrition  
16          back to its reserved number of units or the number of units that can be  
17          supported by its allocated budget authority on a long term basis. Housing  
18          agencies are not to use their program reserves to support units beyond the  
19          number of units supported by allocated budget authority (apart from reserves)  
20          for more than a year except under exceptional circumstances. HAs that use  
21          ACC Reserves in this situation are to restore the amount of reserves depleted

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again become overextended. It must drop at least one unit  
below the reserved number of units to be in a position to  
issue new vouchers.

1 to support ~~statutorily~~ maximized leased units while the HA is attriting through  
2 using less than their full budget authority in subsequent years.

3 c. Housing agencies that are close to a 100% lease up rate are permitted to  
4 issue more units than they can actually support within their budget authority  
5 apart from ACC Reserves on the assumption that not all issued units will  
6 ultimately be used. Housing agencies that are close to a 100% lease-up rate  
7 can be expected to occasionally exceed a 100% lease-up rate based on more  
8 families than predicted leasing units; in such instances the HA is permitted to  
9 support units not supported by budget authority through use of ACC Reserves.  
10 HAs are to manage their lease-up and turnover rates to attempt to achieve full  
11 utilization of their allocated budget authority without relying on ACC  
12 Reserves. HAs that use ACC Reserves in this situation are to restore the  
13 amount of reserves depleted to temporarily support above 100% lease-up units  
14 while the HA is attriting through using less than their full budget authority in  
15 subsequent years.

16 d. ~~A housing agency that has had to access reserves to support units beyond~~  
17 ~~those supported by allocated budget authority must not issue any further~~  
18 ~~tenant-based assistance to families on their waiting list until the number of~~  
19 ~~families in its program is reduced below the baseline level through attrition.~~

20 D. Restoration of Depleted Reserves

21 Subject to the availability of appropriated funds, the Department will restore ACC Reserve  
22 amounts to the 1/6<sup>th</sup> level in accordance with the following:

1. the Department will determine the amount by which the ACC Reserves are depleted based on the ACC Reserve level recorded in HUDCAPS based on the most recent Year End Statement approved and processed by the FMC-;
2. the Department will determine if a HA has leased more than its reserved number of units based on its most recent HUD approved Year End Statement; if the HA has leased more than its reserved number of units, the Department will not restore any depleted ACC Reserves for such an agency during the housing authority's subsequent fiscal year; however, the Department can grant an exception to this policy on a case by case basis where a housing agency has substantially depleted ACC Reserves and ~~convincingly demonstrates~~ HUD has determined that it is not providing long term support for units not supported by allocated budget authority;
3. the Department shall determine ~~when it will~~ the schedule for restoration of depleted ACC Reserves in instances where a housing agency has not leased more than its reserved number of units or HUD has determined that the housing agency is not providing long term support for units not supported by budget authority.

**V. Excess ACC Reserve Amounts**

- A. The Department is permitted to transfer ACC Reserve amounts in excess of 1/6<sup>th</sup> of a housing agency's allocated budget authority as recorded in HUDCAPS once the HA's Year End Statement has been approved by the Department and/or in the process of approving a HA's budget.
- B. The budget authority transferred may be used to provide funding for expiring funding increments, restoration of depleted ACC reserves, the proration of increments in order to synchronize them and as performance based incentives.

1 **VI. Reallocation of Baseline Number of Units**

2 A. On January 1, 2000 and thereafter, the Department shall assess the leasing rate  
3 and use of budget authority of each HA on an annual basis at the time of processing the  
4 HA's year end statement (Approximately six months after the end of the HA's fiscal year)  
5 to determine if the Department should require the HA to transfer some or all of its  
6 unutilized budget authority to be reallocated to another HA.

7 B. In performing the assessment, HUD will exclude ~~Renewal Allocation~~ Units (and  
8 their associated budget authority) awarded to the HA for: litigation purposes; ~~as well as~~  
9 ~~those awarded to the HA for~~ on ~~time~~ schedule replacement/ relocation purposes; as well  
10 as units awarded to the HA whose contract effective date is less than 8 months prior to the  
11 end of the HA's fiscal year.

12 For example for calendar year 2000 the Main Street Housing Authority has an  
13 adjusted baseline of 130 units. In 1999, HUD awarded 10 units to the housing authority  
14 to provide for relocation of 10 families living in 10 units of public housing approved for  
15 demolition. The demolition is not scheduled to take place until the end of calendar year  
16 2000 and the 10 units are being held by the housing authority until they are needed to  
17 support the demolition. For the purposes of assessing the housing authority's lease-up  
18 rate, the Department would exclude the 10 units and only perform the assessment on the  
19 120 units remaining. It would take the 10 units and multiply them by the adjusted per unit  
20 cost for the housing authority (\$4,800) and subtract the result from the housing  
21 authority's overall budget authority (\$48,000).

22 C. If the assessment reveals that the HA's lease rate ~~falls 10 percent below the~~  
23 ~~passing SEMAP leasing level score for a standard performer~~ is less than 90% of the

1 reserved number of units and the HA has utilized less than 90% of its budget authority, the  
2 Department will issue a warning to the HA, the applicable HA governing board and the  
3 chief executive officer of the unit of local or state government. The warning will state that  
4 if the HA fails to increase its lease rate to 95% of the number of reserved units by the  
5 time that it submits its 2<sup>nd</sup> budget after the warning (approximately 16 months after the  
6 warning)~~the rate necessary to achieve a passing score for lease-up under SEMAP within~~  
7 ~~eighteen months of the date of the notification letter,~~ then it's unutilized baseline authority  
8 would be subject to reallocation by the Department to another HA.

9 For example, the Main Street Housing Authority has a fiscal year that ends on  
10 December 31, 1999. At the time that it submits its year end statement (around February  
11 of 2000), it reports that the number of units months leased for its 1999 fiscal year was  
12 1020 (the equivalent of 85 units out of the possible 130) and that it expended \$408,000  
13 out of a total assigned budget authority of \$611,000. When the Department performs its  
14 assessment in conjunction with approving the year end statement (around June of 2000), it  
15 will perform the following steps: in accordance with the previous paragraph, it will  
16 subtract 10 units from 130 adjusted baseline number of units; it will compare the possible  
17 units months leased from the remaining 120 units available for lease-up (120X12 or 1,440)  
18 with the number of actual units months leased (1020) to derive the lease-up percentage  
19 (71%); since the percentage falls below the 90% threshold, HUD will determine the  
20 percentage use of budget authority as follows: it will first subtract the budget authority for  
21 the 10 excluded units (\$48,000) from the total budget authority for the housing authority  
22 (\$611,000) to determine the available budget authority (\$611,000-\$48,000=\$563,000);  
23 HUD will then compare the remaining budget authority to the budget authority used to

1 determine the percentage of budget authority utilization (\$408,000/\$563,000=72%). In  
2 this instance the assessment would indicate that the housing authority should be issued a  
3 warning based on the fact that its lease up rate is 71% and its budget authority utilization  
4 rate is 72%: both below the 90% thresholds.

5 **D. [Add a section that says what a HA can do to alleviate this situation?**

6 **Loaning units to another HA?, subcontracting management?]**

7 E. ~~At the end of the eighteen month period~~ When the HA submits its second budget  
8 after receipt of the warning, the HA will provide a status report on its lease-up rate to the  
9 FMC ~~in relation to the SEMAP leasing rate benchmarks~~. If the HA has failed to achieve a  
10 lease up rate of 95% of its reserved number of units ~~sufficient lease up to be awarded a~~  
11 ~~passing score under SEMAP for the lease-up SEMAP factor by the end of eighteen month~~  
12 ~~period since it received the warning,~~ the HA's unused baseline authority will be subject to  
13 reallocation. In this instance, the FMC will require that unused budget authority (not  
14 required to support currently assisted families through the end of contract increment(s)  
15 terms(s))will be deleted from the HA's budget so as to bring its budget authority  
16 utilization rate to 98%. ~~Within 30 days of the end of the eighteen months from the initial~~  
17 ~~warning, the HA will process a budget amendment deleting the unused budget authority~~  
18 ~~not required to support currently assisted families through the end of the contract~~  
19 ~~increment(s) term(s).~~ Amounts deleted from the HA's budget will be made available for  
20 reallocation. ~~The HA will submit the revised budget to the FMC with a letter indicating~~  
21 ~~the reason for the required budget amendment.~~ The Department will calculate the number  
22 of units the ~~reduced~~ budget authority reduction would have supported based on the HA's

1 adjusted per unit cost. The Department will consider the resulting number of unused units  
2 a transfer of units for the purpose of calculating future renewal funding.

3 For example, the Main Street Housing Authority will process its first budget about  
4 4 months after having received the warning in October of 2000. At the time that it  
5 processes its second budget after the warning in October of 2001, it would provide a  
6 report on its status in terms of its lease-up rate. At that time, it reports that its lease up  
7 rate has improved from the equivalent of 85 units to 105 units. The lease-up percentage  
8 would have increased from 71% to 88%. It would also report that its budget authority  
9 utilization rate increased from 72% to 85% (from \$408,000 to \$478,550). In this instance  
10 the Department would calculate the amount of budget authority that would bring the  
11 housing authority to 98% utilization of its budget authority ( $478,550 \times 1.02 = 488,121$ ).  
12 HUD would then transfer the remaining budget authority ( $563,000 - 488,121 = 74,879$ ) from  
13 the housing authority. HUD would also calculate the number of units that the subtracted  
14 budget authority represents ( $\$74,879$  divided by  $\$4,800$  per unit cost = 16 units) and  
15 permanently transfer those units from the housing authority for the purpose of calculating  
16 future renewals.

17 F. Each year the Department will issue a PIH Notice (and subsequent Federal  
18 Register) notice outlining the criteria for determining the housing agencies to be recipients  
19 of reallocated baseline authority. The notice will outline the process for implementing the  
20 transfer as well as the number of units and the priority for reallocating the baseline  
21 authority.